IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

WRIT PETITION NO : 14365 of 1993

Between:

Ch.Jagannadha Rao,

S/o Ch.V.G.Surya Rao, Aged : About 51 years,

Branch Manager, Sri Visakha Grameena Bank,

Mokshamamidipalli,

Vizianagaram District ..... PETITIONER

AND

1. Board of Directors,

Sri Visakha Grameena Bank,

Srikakulam, Srikakulam Dist.

2. Chairman & Disciplinary Authority,

Sri Visakha Grameena Bank,

Srikakulam, Srikakulam District **.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ of certiorari or any other appropriate writ, order or direction of the like nature and quash letter No.DP.11, dated 8.4.1993 issued by the Chairman, Sri

Visakha Grameena Bank, Srikakulam, Srikakulam District; and pass such other order or orders appropriate in the circumstances of the case.

Counsel for the Petitioner : MR.Tuhin Kumar G

Counsel for the Respondent : Advocate General and

Mr.K.Srinivas Murthy

The Court made the following :

ORDER :(per JC,J)

The writ petition is filed with the prayer as follows :

> "It is prayed that this Hon'ble Court may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction of the like nature and quash Letter No.DP.11, dated 8.4.1993 issued by the Chairman, Sri Visakha Grameena Bank, Srikakulam, and pass such other order or further orders."

The petitioner was working with the 1st respondent Bank. On 24.2.1986, a charge-

sheet was issued to the petitioner on various counts of misconduct, the details of which are not necessary for the present purpose. An enquiry was conducted. The Enquiry Officer submitted his report on 6.4.1990 to the disciplinary authority. On 29.6.1992, the disciplinary authority imposed a punishment of stoppage of two increments with cumulative effect. Aggrieved by the same, the petitioner preferred an appeal to the Board of Directors of the Bank, the 1st respondent herein. By an order dated 8.4.1993, the appellate authority modified the punishment to one of stoppage of one increment with cumulative effect. Not satisfied with the relief granted by the appellate authority, the present writ petition is filed.

Sri G.Tuhin Kumar, learned counsel for the petitioner submitted that the report of the Enquiry Officer dated 6.4.1990 was not furnished to the petitioner and therefore there is a violation of the principles of natural justice. Consequentially, all subsequent action of the respondents is rendered illegal.

The law relating to the principles of natural justice in the matter of disciplinary proceedings of the employees of the State within the meaning of the Article 12, but not governed by the provisions of Article 311 is now settled by two decisions of the Supreme Court in **Union of India v. Mohd. Ramzan Khan** and **Managing Director, ECIL v. B.Karunakar.** In the **ECIL case (supra 2),** a Constitution Bench of the Supreme Court reviewed the entire legal position including that of the law laid down in **Ramzan Khan's case (supra 1)**, framed seven questions and answered. Of the seven questions, question No. V and VI are relevant for the purpose of present case which read as follows :

> "(*v*) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?
>
> (*vi*) From what date the law requiring furnishing of the report, should come into operation?"

Dealing with Question No.V, the Supreme Court held as follows :

> "[v] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

The substance is that mere failure on the part of the employer to furnish the Enquiry Officer's report does not automatically result in invalidating the punishment imposed on the employee. The employee is obligated to establish that he suffered a prejudice by virtue of the non supply of the Enquiry Officer's report to him and therefore the punishment is awarded. Coming to the VI question extracted above, the Supreme Court recognized that there was lot of unsettlement in the law prior to **Ramzan Khan's case (supra 1)** regarding the obligation of the employer to furnish the Enquiry Officer's report to the employee and it is only in **Ramzan Khan's case (supra 1)**, a categoric declaration of law was made by the Supreme Court that the employee is entitled to receive the Enquiry Officer's report and their Lordship therefore held in **ECIL's case (supra 2)** that giving effect to such a declaration of law such as the one made in **Ramzan Khan's case** as if that had always been position of law would create lot of unsettlement of the settled cases and therefore I hold that **Ramzan Khan's case (supra 1)** rightly declared that such a declaration would come into effect only from the date of the judgment of **Ramzan Khan's case (supra 1)** and not for the cases prior to **Ramzan Khan's case (surpa 1).**

Admittedly, in the present case, the punishment was imposed on the petitioner subsequent to the date of the decision in **Ramzan Khan's case (supra 1)** in which case normally the petitioner is entitled to receive copy of the Enquiry Officer's report as per the declaration made in **Ramzan Khan's case (supra 1)** and reiterated in **ECIL's case (supra 2).** However, that right is not a unqualified right. As already noticed, while answering the Question No.V, the Constitution Bench of the Supreme Court in **ECIL's case (supra 1)** that the petitioner who complains the non receipt of the Enquiry Officer's report should also establish that he suffered a prejudice.

In the present case, except for stating that the Enquiry Officer's report was not furnished to the petitioner, the petitioner has not brought anything to my notice to establish that he suffered prejudice as a consequence of such failure to furnish the Enquiry Officer's report. Learned counsel for the petitioner also attempted to make a submission that in view of the law laid down by the Supreme Court in **Ramzan Khan's case (supra 1)**, the petitioner is entitled for a show-cause notice after the Enquiry Officer's report calling upon the views of the petitioner as to the proposed punishment. It is further submitted by the petitioner that as no such notice was given to the petitioner, the punishment imposed on the petitioner is illegal. Unfortunately the fact that no notice such as the one referred to above was given to the petitioner is not to be found in the pleadings. Whether such a notice was issued or not is a question of fact which is required to be pleaded and opportunity be given to the respondents either to accept or to deny the same. In the absence of a pleading whatsoever regarding failure to issue the said notice, I do not see reason that the petitioner be permitted to argue the said question as it pertains to pure question of fact.

In the result, I do not see any merits in the writ petition and the same is therefore dismissed.

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knk 28.10.2004

To

1. The Board of Directors, Sri Visakha Grameena Bank, Srikakulam, Srikakulam District.
2. The Chairman & Disciplinary Authority, Sri Visakha Grameena Bank, Srikakulam, Srikakulam District.
3. Two CCs to the Advocate General, High Court of A.P., Hyderabad (OUT).
4. Two CD copies.